

The Telecommunications Excise Tax is imposed upon the act or privilege of originating in this State or receiving in this State intrastate or interstate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. 35 ILCS 630/3 and 35 ILCS 630/4. (This is a GIL.)

December 11, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated September 22, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is a provider of access lines for high speed data transfer and access to the Internet. We are located in CITY/STATE and are expanding into Illinois. I would like to make certain that we are collecting all applicable taxes from our Illinois customers. We will be selling service both as a retailer to business and also as a wholesaler to internet service providers. Our typical charges will be a one time installation/activation fee plus recurring monthly fees for service. The monthly service we provide will be unlimited use to our access lines. I have the following questions, which I need you to answer:

Is our service subject to Illinois sales and use tax?

Is our service subject to Illinois telecommunications excise tax?  
One time installation/activation fee?  
Recurring monthly service charge?

What is the difference between Illinois telecommunication excise tax and telecommunications infrastructure maintenance fees? Are we subject to paying both?

I understand that in addition to the State of Illinois, various municipalities have enacted telecommunications excise tax. Is there a listing of these municipalities and their charges?

Your prompt attention is greatly appreciated. Please send me any booklets or instructions for collection and payment of these telecommunication taxes. Any questions, please contact me at ####. Thank you for your assistance.

The Illinois Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101, enclosed. Transactions which do not involve the sale of tangible personal property at retail are not subject to the Retailers' Occupation Tax. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. If no tangible personal property is transferred, then no Service Occupation Tax liability is incurred. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating in this State or receiving in this State intrastate or interstate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. 35 ILCS 630/3 and 35 ILCS 630/4.

Section 2(a) of the Telecommunications Excise Tax Act states that gross charges means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer. Charges for services that are provided by telecommunications retailer that are necessary for, or are directly related to, the retailers' provision of telecommunications to their customers are included in gross receipts subject to the tax. Gross charges do not include charges for customer equipment, including equipment that is leased or rented by the customer from any source, when such charges are disaggregated and separately identified from other charges in the books and records of the retailer.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate

not to exceed 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

Assuming that the tangible personal property which is sold to customers is not permanently affixed to real estate, charges for equipment are generally subject to Retailers' Occupation Tax. This being the case, the installation charges may also be subject to the Retailers' Occupation Tax. See the enclosed copy of Section 130.450. As you can see from this regulation, such charges are included in gross receipts subject to Retailers' Occupation Tax unless they are the subject of a separate agreement. A separate agreement would include an invoice which separately lists the installation charge and is also signed by the customer. Such equipment may also be subject to the Telecommunications Excise Tax, if not separately identified and disaggregated per Section 495.100(b). Please note that if the tangible personal property is permanently affixed to real estate, different rules would apply. See 86 Ill. Adm. Code 130.1940 and 130.2075.

In regards to monthly service charges, please note that the term "gross charges" is defined at 35 ILCS 630/2(a), and includes the amount paid for the act or privilege of originating or receiving telecommunication in Illinois and for all services and equipment provided in connection therewith by a retailer. See the enclosed copy of 86 Ill. Adm. Code 495.100. Access charges and monthly service fees are generally fully includable in gross charges subject to the Telecommunications Excise Tax. They are not subject to the Retailers' Occupation Tax. That tax, as you know, applies only to the sale of tangible personal property at retail.

I have included Form RT-3, Telecommunications Excise Tax Infrastructure Maintenance Fees Application for registration. If you have any questions regarding registration, please contact Registration and Returns Processing at either 217/524-6693 or 217/785-6602

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.